

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DIMITRITZA TOROMANOVA,)
Plaintiff,) 2:12-cv-1637-LRH-CWH
v.)
WELLS FARGO BANK, N.A.; et al.,) ORDER
Defendants.)

Before the court is plaintiff Dimitritza Toromanova’s (“Toromanova”) motion to remand.

I. Facts and Procedural History

Plaintiff Toromanova filed a complaint in state court against defendants for wrongful foreclosure. *See* Doc. #1, Exhibit A. Defendants removed the action to federal court on the basis of diversity jurisdiction. Doc. #1. Thereafter, Toromanova filed the present motion to remand.

Doc. #17.

II. Legal Standard

Under 28 U.S.C. § 1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the

¹ Refers to the court's docket entry number.

1 place where such action is pending." 28 U.S.C. § 1441(a).

2 Removal of a case to a United States district court may be challenged by motion. 28 U.S.C.
 3 § 1441(c). A federal court must remand a matter if there is a lack of jurisdiction. *Id.* Removal
 4 statutes are construed restrictively and in favor of remanding a case to state court. *See Shamrock*
 5 *Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108-09 (1941); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566
 6 (9th Cir. 1992). On a motion to remand, the removing defendant faces a strong presumption against
 7 removal, and bears the burden of establishing that removal is proper. *Gaus*, 980 F.2d at 566-67;
 8 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

9 **III. Discussion**

10 A district court has original jurisdiction over civil actions where the suit is between citizens
 11 of different states and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.
 12 28 U.S.C. § 1332(a). Further, an action based on diversity jurisdiction is "removable only if none of
 13 the parties in interest properly joined and served as defendants is a citizen of the state in which such
 14 action is brought." 28 U.S.C. § 1441(b). Here, defendants argue that there is complete diversity
 15 between the parties because non-diverse defendant Tiffany K. Labo ("Labo") is a fraudulently
 16 joined defendant whose Nevada citizenship cannot be used to defeat the exercise of diversity
 17 jurisdiction.

18 A fraudulently joined defendant does not "defeat removal on diversity grounds." *Ritchey v.*
 19 *Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998). Fraudulent joinder "occurs when a plaintiff
 20 fails to state a cause of action against a resident defendant, and the failure is obvious according to
 21 the settled rules of the state." *Ritchey*, 139 F.3d at 1318; *see also McCabe v. General Foods Corp.*,
 22 811 F.2d 1336, 1339 (9th Cir. 1987); *Kruso v. International Tel. & Tel. Corp.*, 872 F.2d 1416,
 23 1426-27 (9th Cir. 1989); *Gasnik v. State Farm Ins. Co.*, 825 F.Supp. 245, 247 (E.D. Cal. 1992). In
 24 determining whether a cause of action is stated against a non-diverse defendant, courts look only to
 25 a plaintiff's pleadings. *Gardner v. UICI*, 508 F.3d 559, 561 n.3 (9th Cir. 2007).

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1 Nevada is a notice-pleading jurisdiction which liberally construes pleadings. *Chavez v.*
2 *Robberson Steel Co.*, 584 P.2d 159, 160 (Nev. 1978). The allegations of a complaint are sufficient
3 to assert a claim for relief when the allegations “give fair notice of the nature and basis” for a claim.
4 *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 874 P.2d 744, 746 (Nev. 1994).

5 In her complaint, Toromanova seeks a declaration that she owns the underlying property
6 free and clear of any defendants’ interest. Toromanova’s sole allegation against defendant Labo is
7 that she is the real estate listing agent for the property contracted by Wells Fargo to place a lockbox
8 on the property and show the property to prospective buyers. Toromanova does not seek any claims
9 for relief or any remedies against Labo except for a declaration that Labo has no interest in the
10 property. It is undisputed that Labo, as defendants’ listing agent, does not have any ownership
11 interest in the property, nor does Labo assert such an interest. *See* Doc. #21. As such, a declaration
12 of property ownership does not affect Labo in any way. Thus, Labo is not a proper defendant in
13 this action. Therefore, based on the allegations in the complaint, the court finds that non-diverse
14 defendant Labo is a fraudulently joined defendant whose citizenship does not defeat the exercise of
15 diversity jurisdiction. Accordingly, the court finds that there is complete diversity between the
16 parties and that the exercise of diversity jurisdiction is appropriate.

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18 IT IS THEREFORE ORDERED that plaintiff’s motion to remand (Doc. #17) is DENIED.

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IT IS SO ORDERED.

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DATED this 6th day of January, 2013.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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